

Editorial

Cracking the heart of James Hardie

September 25, 2004

The Age

The importance of ethical corporate behaviour is being demonstrated.

The James Hardie story has all the dimensions of a morality play. This week, a NSW Government inquiry headed by David Jackson, QC, found grounds for criminal charges and evidence of misleading and deceptive conduct by James Hardie Industries and its senior executives. The Australian Securities and Investments Commission is now investigating whether chief executive Peter Macdonald knew he was misleading the Australian Stock Exchange when he told them James Hardie had set up a fully funded charitable foundation to compensate asbestos victims. (As has been widely reported, the compensation fund was underfunded by more than \$1.5 billion.)

Company chairwoman Meredith Hellicar has said Mr Macdonald has the trust and support of the board. She is also chairing a sub-committee that is examining the Jackson report. At issue is whether Mr Macdonald's behaviour was deliberately misleading or merely incompetent. Either way, the case for his resignation is strong. Mr Macdonald presided over James Hardie's removal to the Netherlands in 2001, ostensibly because the shift presented tax advantages.

It is widely believed however that the move and the restructure that accompanied it was an attempt by the company to dodge responsibility for future asbestos claims. If this was the case, the strategy has failed spectacularly. On Friday, August 13 — on the last day of the NSW Government inquiry into its conduct — James Hardie offered to pay compensation for all existing sufferers of asbestosis and those who fall ill from exposure to its products. This was a welcome, if belated turnaround, although unions, victims and their lawyers are still arguing over the details of its compensation offer.

The NSW inquiry also uncovered loopholes in the law. When James Hardie moved to Holland it put two subsidiary companies that once manufactured asbestos products into a foundation, and cut itself off from its asbestos liabilities. Although Mr Jackson did not recommend an overhaul of corporations law, he observed the rules were out of step with community expectations. It is good the building materials manufacturer has moved to correct its error, but by acting as it has James Hardie has sullied its own name, eroded community trust and added to the stress of asbestos victims and their families.

The recent resurgence of James Hardie shares has caused some observers to reflect on the callousness of the markets, but there are pragmatic grounds for welcoming the turnaround — future sufferers of asbestos-related ailments will be much better off if the company remains afloat. James Hardie still has a long way to go to restore its credibility. The idea that it has attempted to shirk its financial and ethical responsibilities is now firmly lodged in the public mind. The saga illustrates the importance of appearing to act ethically — and of actually doing so.